

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 281

HOUSE BILL 2620

AN ACT

AMENDING TITLE 12, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 14;
AMENDING SECTION 33-2003, ARIZONA REVISED STATUTES; RELATING TO PURCHASER
DWELLING ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 8, Arizona Revised Statutes, is amended
3 by adding article 14, to read:

4 ARTICLE 14. PURCHASER DWELLING ACTIONS

5 12-1361. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ASSOCIATION" MEANS EITHER OF THE FOLLOWING:

8 (a) THE UNIT OWNERS' ASSOCIATION ORGANIZED UNDER SECTION 33-1241.

9 (b) A NONPROFIT CORPORATION OR UNINCORPORATED ASSOCIATION OF OWNERS
10 CREATED PURSUANT TO A DECLARATION TO OWN AND OPERATE PORTIONS OF A PLANNED
11 COMMUNITY AND WHICH HAS THE POWER UNDER THE DECLARATION TO ASSESS ASSOCIATION
12 MEMBERS TO PAY THE COSTS AND EXPENSES INCURRED IN THE PERFORMANCE OF THE
13 ASSOCIATION'S OBLIGATIONS UNDER THE DECLARATION.

14 2. "COMMUNITY DOCUMENTS" MEANS THE DECLARATION, BYLAWS, ARTICLES OF
15 INCORPORATION, IF ANY, AND RULES, IF ANY.

16 3. "DWELLING" MEANS A SINGLE OR MULTIFAMILY UNIT DESIGNED FOR
17 RESIDENTIAL USE AND COMMON AREAS AND IMPROVEMENTS THAT ARE OWNED OR
18 MAINTAINED BY AN ASSOCIATION OR BY MEMBERS OF AN ASSOCIATION. A DWELLING
19 INCLUDES THE SYSTEMS, OTHER COMPONENTS AND IMPROVEMENTS THAT ARE PART OF A
20 SINGLE OR MULTIFAMILY UNIT AT THE TIME OF CONSTRUCTION.

21 4. "DWELLING ACTION" MEANS ANY ACTION BROUGHT BY A PURCHASER AGAINST
22 THE SELLER OF A DWELLING ARISING OUT OF OR RELATED TO THE DESIGN,
23 CONSTRUCTION, CONDITION OR SALE OF THE DWELLING.

24 5. "MULTI-UNIT DWELLING ACTION" MEANS A DWELLING ACTION BROUGHT BY AN
25 ASSOCIATION OR BY OR ON BEHALF OF THE OWNERS OF FIVE OR MORE INDIVIDUAL
26 DWELLING UNITS.

27 6. "PURCHASER" MEANS ANY PERSON OR ENTITY WHO FILES A DWELLING ACTION.

28 7. "SELLER" MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION,
29 ASSOCIATION OR OTHER ORGANIZATION THAT IS ENGAGED IN THE BUSINESS OF
30 DESIGNING, CONSTRUCTING OR SELLING DWELLINGS, INCLUDING A PERSON, FIRM,
31 PARTNERSHIP, CORPORATION, ASSOCIATION OR ORGANIZATION LICENSED PURSUANT TO
32 TITLE 32, CHAPTER 20.

33 12-1362. Dwelling action; court stay

34 A. IF A PURCHASER FILES A DWELLING ACTION WITHOUT FIRST COMPLYING WITH
35 THIS ARTICLE, ON APPLICATION BY A PARTY TO THE ACTION, THE COURT MAY STAY THE
36 ACTION FOR NINETY DAYS TO ALLOW THE PARTIES TO COMPLY WITH THIS ARTICLE.

37 B. ABSENT A SHOWING OF GOOD CAUSE, THE COURT SHALL STAY A MULTI-UNIT
38 DWELLING ACTION FOR NINETY DAYS TO ALLOW THE PARTIES TO COMPLY WITH THIS
39 ARTICLE.

40 C. ABSENT A SHOWING OF GOOD CAUSE, THE COURT SHALL NOT STAY A DWELLING
41 ACTION WITH RESPECT TO CLAIMS FOR ALLEGED DEFECTS INVOLVING AN IMMEDIATE
42 THREAT TO THE LIFE OR SAFETY OF PERSONS OCCUPYING OR VISITING THE DWELLING.

1 12-1363. Notice and opportunity to repair

2 A. AT LEAST NINETY DAYS BEFORE FILING A DWELLING ACTION, OTHER THAN
3 A MULTI-UNIT DWELLING ACTION, THE PURCHASER SHALL GIVE WRITTEN NOTICE BY
4 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE SELLER SPECIFYING IN
5 REASONABLE DETAIL THE BASIS OF THE DWELLING ACTION.

6 B. IN A MULTI-UNIT DWELLING ACTION, THE PURCHASER SHALL SERVE THE
7 SELLER, TOGETHER WITH THE COMPLAINT, A WRITTEN NOTICE SPECIFYING IN
8 REASONABLE DETAIL THE BASIS OF THE DWELLING ACTION. THE NOTICE IN A
9 MULTI-UNIT DWELLING ACTION INVOLVING ALLEGED DEFECTS THAT ARE SUBSTANTIALLY
10 SIMILAR IN MULTIPLE RESIDENTIAL UNITS MAY COMPLY WITH THIS SECTION BY
11 PROVIDING A REASONABLY DETAILED DESCRIPTION OF THE ALLEGED DEFECTS IN A FAIR
12 AND REPRESENTATIVE SAMPLE OF THE AFFECTED RESIDENTIAL UNITS.

13 C. AFTER RECEIPT OF THE NOTICE DESCRIBED IN SUBSECTION A OR B OF THIS
14 SECTION, THE SELLER MAY INSPECT THE DWELLING TO DETERMINE THE NATURE AND
15 CAUSE OF THE ALLEGED DEFECTS AND THE NATURE AND EXTENT OF ANY REPAIRS OR
16 REPLACEMENTS NECESSARY TO REMEDY THE ALLEGED DEFECTS. THE PURCHASER SHALL
17 ENSURE THAT THE DWELLING IS MADE AVAILABLE FOR INSPECTION NO LATER THAN TEN
18 DAYS AFTER THE PURCHASER RECEIVES THE SELLER'S REQUEST FOR AN
19 INSPECTION. THE SELLER SHALL PROVIDE REASONABLE NOTICE TO THE PURCHASER
20 BEFORE CONDUCTING THE INSPECTION. THE INSPECTION SHALL BE CONDUCTED AT A
21 REASONABLE TIME. THE SELLER MAY USE REASONABLE MEASURES, INCLUDING TESTING,
22 TO DETERMINE THE NATURE AND CAUSE OF THE ALLEGED DEFECTS AND THE NATURE AND
23 EXTENT OF ANY REPAIRS OR REPLACEMENTS NECESSARY TO REMEDY THE ALLEGED
24 DEFECTS. IF THE SELLER CONDUCTS TESTING PURSUANT TO THIS SUBSECTION, THE
25 SELLER SHALL RESTORE THE DWELLING TO ITS CONDITION BEFORE THE TESTING.

26 D. WITHIN SIXTY DAYS AFTER RECEIPT OF THE NOTICE DESCRIBED IN
27 SUBSECTION A, THE SELLER SHALL SEND TO THE PURCHASER A GOOD FAITH, WRITTEN
28 RESPONSE TO THE PURCHASER'S NOTICE BY CERTIFIED MAIL, RETURN RECEIPT
29 REQUESTED. THE RESPONSE MAY INCLUDE AN OFFER TO REPAIR OR REPLACE ANY
30 ALLEGED DEFECTS, TO HAVE THE ALLEGED DEFECTS REPAIRED OR REPLACED AT THE
31 SELLER'S EXPENSE OR TO PROVIDE MONETARY COMPENSATION TO THE PURCHASER. THE
32 OFFER SHALL DESCRIBE IN REASONABLE DETAIL ALL REPAIRS OR REPLACEMENTS THAT
33 THE SELLER IS OFFERING TO MAKE OR PROVIDE TO THE DWELLING AND A REASONABLE
34 ESTIMATE OF THE DATE BY WHICH THE REPAIRS OR REPLACEMENTS WILL BE MADE OR
35 MONETARY COMPENSATION WILL BE PROVIDED.

36 E. IF THE SELLER DOES NOT PROVIDE A WRITTEN RESPONSE TO THE
37 PURCHASER'S NOTICE WITHIN SIXTY DAYS, THE PURCHASER MAY FILE A DWELLING
38 ACTION WITHOUT WAITING FOR THE EXPIRATION OF NINETY DAYS AS REQUIRED BY
39 SUBSECTION A OF THIS SECTION OR A STAY, IF ENTERED, SHALL BE LIFTED TO ALLOW
40 THE ACTION TO PROCEED.

41 F. WITHIN TWENTY DAYS AFTER RECEIPT OF THE SELLER'S OFFER MADE
42 PURSUANT TO SUBSECTION D OF THIS SECTION, THE PURCHASER SHALL PROVIDE A GOOD
43 FAITH, WRITTEN RESPONSE. A PURCHASER WHO ACCEPTS THE SELLER'S OFFER MADE
44 PURSUANT TO SUBSECTION D OF THIS SECTION SHALL DO SO IN WRITING BY CERTIFIED

1 MAIL, RETURN RECEIPT REQUESTED. A PURCHASER WHO REJECTS THE SELLER'S OFFER
2 MADE PURSUANT TO SUBSECTION D OF THIS SECTION SHALL RESPOND TO THE SELLER IN
3 WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE RESPONSE SHALL
4 INCLUDE THE BASIS FOR THE PURCHASER'S REJECTION OF THE SELLER'S OFFER AND MAY
5 INCLUDE A COUNTEROFFER. WITHIN TEN DAYS AFTER RECEIPT OF THE PURCHASER'S
6 RESPONSE, THE SELLER MAY MAKE A BEST AND FINAL OFFER TO THE PURCHASER IN
7 WRITING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

8 G. THE FOLLOWING ARE NOT ADMISSIBLE IN ANY DWELLING ACTION:

9 1. A PURCHASER'S GOOD FAITH NOTICE GIVEN TO THE SELLER PURSUANT TO
10 SUBSECTION A OR B OF THIS SECTION.

11 2. A SELLER'S GOOD FAITH RESPONSE OR OFFER MADE PURSUANT TO SUBSECTION
12 D OF THIS SECTION.

13 3. A PURCHASER'S GOOD FAITH RESPONSE MADE TO A SELLER'S OFFER PURSUANT
14 TO SUBSECTION F OF THIS SECTION.

15 4. A PURCHASER'S GOOD FAITH COUNTEROFFER TO A SELLER'S OFFER MADE
16 PURSUANT TO SUBSECTION F OF THIS SECTION.

17 5. A SELLER'S GOOD FAITH BEST AND FINAL OFFER MADE PURSUANT TO
18 SUBSECTION F OF THIS SECTION.

19 H. THE FOLLOWING ARE ADMISSIBLE IN ANY DWELLING ACTION:

20 1. A PURCHASER'S FAILURE TO PROVIDE A GOOD FAITH NOTICE TO A SELLER
21 AS REQUIRED BY SUBSECTION A OR B OF THIS SECTION.

22 2. A PURCHASER'S FAILURE TO ALLOW A REASONABLE INSPECTION REQUESTED
23 BY A SELLER AS REQUIRED BY SUBSECTION C OF THIS SECTION.

24 3. A PURCHASER'S FAILURE TO PROVIDE A GOOD FAITH, WRITTEN RESPONSE TO
25 A SELLER'S OFFER AS REQUIRED BY SUBSECTION F OF THIS SECTION.

26 4. A SELLER'S FAILURE TO RESPOND IN GOOD FAITH TO THE PURCHASER'S
27 NOTICE AS REQUIRED BY SUBSECTION D OF THIS SECTION.

28 I. A PURCHASER MAY AMEND THE NOTICE PROVIDED PURSUANT TO SUBSECTION
29 A OR B OF THIS SECTION TO INCLUDE ALLEGED DEFECTS IDENTIFIED IN GOOD FAITH
30 AFTER SUBMISSION OF THE ORIGINAL NOTICE DURING THE NINETY-DAY NOTICE
31 PERIOD. SELLER SHALL HAVE A REASONABLE PERIOD OF TIME TO CONDUCT AN
32 INSPECTION, IF REQUESTED, AND THEREAFTER THE PARTIES SHALL COMPLY WITH THE
33 REQUIREMENTS OF SUBSECTIONS C, D AND F OF THIS SECTION FOR THE ADDITIONAL
34 ALLEGED DEFECTS.

35 J. A PURCHASER'S WRITTEN NOTICE MADE PURSUANT TO SUBSECTION A OF THIS
36 SECTION OR AN AMENDED NOTICE MADE PURSUANT TO SUBSECTION I OF THIS SECTION
37 TOLLS THE APPLICABLE STATUTE OF LIMITATIONS, INCLUDING SECTION 12-552, UNTIL
38 NINETY DAYS AFTER THE SELLER RECEIVES THE NOTICE OR FOR A REASONABLE PERIOD
39 AGREED TO IN WRITING BY THE PURCHASER AND SELLER.

40 K. SUBJECT TO ARIZONA RULES OF COURT, DURING THE PENDENCY OF A
41 DWELLING ACTION THE PURCHASER MAY SUPPLEMENT THE LIST OF ALLEGED DEFECTS TO
42 INCLUDE ADDITIONAL ALLEGED DEFECTS IDENTIFIED IN GOOD FAITH AFTER FILING OF
43 THE ORIGINAL DWELLING ACTION. THE COURT SHALL PROVIDE THE SELLER A
44 REASONABLE AMOUNT OF TIME TO INSPECT THE DWELLING TO DETERMINE THE NATURE AND

1 CAUSE OF THE ADDITIONAL ALLEGED DEFECTS AND THE NATURE AND EXTENT OF ANY
2 REPAIRS OR REPLACEMENTS NECESSARY TO REMEDY THE ADDITIONAL ALLEGED
3 DEFECTS. THE PARTIES SHALL COMPLY WITH THE REQUIREMENTS OF SUBSECTIONS C,
4 D AND F OF THIS SECTION FOR THE ADDITIONAL ALLEGED DEFECTS.

5 L. THE SERVICE OF AN AMENDED NOTICE OF ALLEGED DEFECTS DURING THE
6 PENDENCY OF A DWELLING ACTION SHALL RELATE BACK TO THE ORIGINAL NOTICE OF
7 ALLEGED DEFECTS FOR THE PURPOSE OF TOLLING APPLICABLE STATUTES OF
8 LIMITATIONS, INCLUDING SECTION 12-552.

9 M. BY WRITTEN AGREEMENT OF THE SELLER AND PURCHASER, THE TIME PERIODS
10 PROVIDED IN THIS SECTION MAY BE EXTENDED. BY ORDER OF THE COURT, THE TIME
11 PERIODS PROVIDED FOR IN SUBSECTIONS C, D AND F OF THIS SECTION MAY BE
12 EXTENDED.

13 N. FOR THE SALE OF A DWELLING THAT OCCURS WITHIN THE STATUTORY PERIOD
14 SET FORTH IN SECTION 12-552, THE ESCROW AGENT, AS DEFINED IN SECTION 6-801,
15 SHALL PROVIDE NOTICE TO THE PURCHASER OF THE PROVISIONS OF THIS SECTION AND
16 SECTIONS 12-1361 AND 12-1362. NOTHING IN THIS SUBSECTION CREATES A FIDUCIARY
17 DUTY OR PROVIDES ANY PERSON OR ENTITY WITH A PRIVATE RIGHT OR CAUSE OF ACTION
18 OR ADMINISTRATIVE ACTION.

19 12-1364. Dwelling action; attorney fees, costs and expert
20 witness fees

21 IN ANY CONTESTED DWELLING ACTION, THE COURT SHALL AWARD THE SUCCESSFUL
22 PARTY REASONABLE ATTORNEY FEES, REASONABLE EXPERT WITNESS FEES AND TAXABLE
23 COSTS. IF THE SELLER'S OFFER, INCLUDING ANY BEST AND FINAL OFFER, IS
24 REJECTED AND THE JUDGMENT FINALLY OBTAINED IS LESS THAN OR LESS FAVORABLE TO
25 THE PURCHASER THAN THE OFFER OR BEST AND FINAL OFFER, THE SELLER IS DEEMED
26 TO BE THE SUCCESSFUL PARTY FROM THE DATE OF THE OFFER OR BEST AND FINAL
27 OFFER. IF THE JUDGMENT FINALLY OBTAINED IS MORE FAVORABLE TO THE PURCHASER
28 THAN THE SELLER'S OFFER OR BEST AND FINAL OFFER, THE PURCHASER IS DEEMED TO
29 BE THE SUCCESSFUL PARTY FROM THE DATE OF THE OFFER OR BEST AND FINAL
30 OFFER. THIS SECTION SHALL NOT BE CONSTRUED AS ALTERING, PROHIBITING OR
31 RESTRICTING PRESENT OR FUTURE CONTRACTS OR STATUTES THAT MAY PROVIDE FOR
32 ATTORNEY FEES.

33 12-1365. Notification; right to file a complaint with the
34 registrar of contractors

35 A. A WRITTEN CONTRACT FOR THE SALE OF A NEWLY CONSTRUCTED DWELLING
36 BETWEEN A BUYER OF A NEWLY CONSTRUCTED DWELLING AND THE SELLER RESPONSIBLE
37 FOR THE ORIGINAL CONSTRUCTION OF THE DWELLING SHALL CONTAIN, OR PROVIDE
38 SEPARATE NOTICE OF, THE FOLLOWING PROVISION:

39 UNDER ARIZONA REVISED STATUTES SECTION 32-1155, A BUYER OF A
40 DWELLING HAS THE RIGHT TO FILE A WRITTEN COMPLAINT AGAINST THE
41 HOMEBUILDER WITH THE ARIZONA REGISTRAR OF CONTRACTORS WITHIN TWO
42 YEARS OF THE COMMISSION OF AN ACT IN VIOLATION OF ARIZONA
43 REVISED STATUTES SECTION 32-1154, SUBSECTION A.

1 B. THE NOTICE REQUIRED IN SUBSECTION A OF THIS SECTION SHALL BE
2 PROMINENTLY DISPLAYED AND APPEAR IN AT LEAST TEN-POINT BOLD TYPE.

3 C. THE BUYER OF THE DWELLING IS NOT DEEMED TO HAVE RECEIVED THE NOTICE
4 REQUIRED PURSUANT TO SUBSECTION A OF THIS SECTION, UNLESS THE BUYER INITIALS
5 THE NOTICE PROVISION.

6 12-1366. Applicability; claims and actions

7 A. THIS ARTICLE DOES NOT APPLY:

8 1. IF A CONTRACT FOR THE SALE OF A DWELLING OR AN ASSOCIATION'S
9 COMMUNITY DOCUMENTS CONTAIN COMMERCIALLY REASONABLE ALTERNATIVE DISPUTE
10 RESOLUTION PROCEDURES. IF THE CONTRACT FOR THE SALE OF A DWELLING CONTAINS
11 THE PROCEDURES, THE PROCEDURES SHALL BE CONSPICUOUSLY PRINTED ON THE FACE OF
12 THE CONTRACT IN BOLD AND CAPITAL LETTERS.

13 2. TO PERSONAL INJURY CLAIMS.

14 3. TO DEATH CLAIMS.

15 4. TO CLAIMS FOR DAMAGE TO PROPERTY OTHER THAN A DWELLING.

16 5. TO COMMON LAW FRAUD CLAIMS.

17 6. TO PROCEEDINGS BROUGHT PURSUANT TO TITLE 32, CHAPTER 10.

18 7. TO CLAIMS SOLELY SEEKING RECOVERY OF MONIES EXPENDED FOR REPAIRS
19 TO ALLEGED DEFECTS THAT HAVE BEEN REPAIRED BY THE PURCHASER.

20 B. A DWELLING ACTION BROUGHT BY AN ASSOCIATION IS ALSO SUBJECT TO
21 TITLE 33, CHAPTER 18.

22 Sec. 2. Section 33-2003, Arizona Revised Statutes, is amended to read:

23 33-2003. Applicability

24 A. This chapter applies only to homeowners' association dwelling
25 actions. This chapter does not apply to:

26 1. Actions filed by individual members of a homeowners' association
27 against a seller.

28 2. Claims for personal injury, death or damage to property other than
29 a dwelling.

30 3. Common law fraud claims.

31 4. Proceedings brought pursuant to title 32, chapter 10, whether filed
32 by a homeowners' association or by individual members of a homeowners'
33 association.

34 B. A HOMEOWNERS' ASSOCIATION DWELLING ACTION IS ALSO SUBJECT TO TITLE
35 12, CHAPTER 8, ARTICLE 14.

APPROVED BY THE GOVERNOR MAY 21, 2002.


FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 22, 2002.

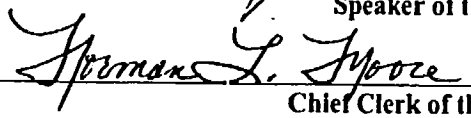
HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 16, 2002,

by the following vote: 53 Ayes,

3 Nays, 3 Not Voting
1 Excused


Speaker of the House

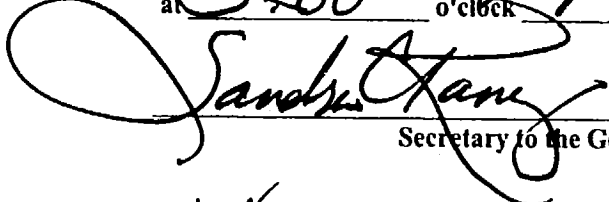

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16 day of May, 2002

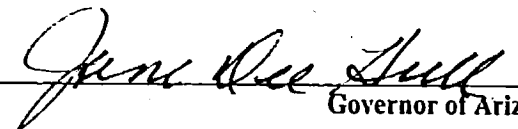
at 3:00 o'clock P M.


Secretary to the Governor

Approved this 21st day of

May, 2002,

at 10:08 o'clock A M.


Governor of Arizona

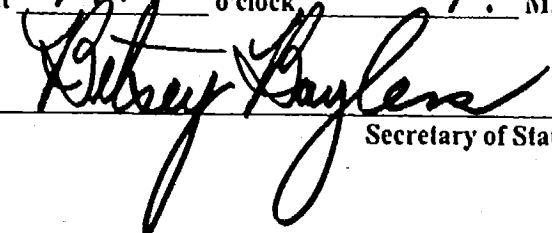
H.B. 2620

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 22 day of May, 2002

at 12:13 o'clock P M.


Secretary of State

Passed the House April 9, 2002,

by the following vote: 46 Ayes,

7 Nays, 6 Not Voting
1 EXCUSED

Jake Elute
Speaker of the House
Pro Tempore

Norman L. Moore
Chief Clerk of the House

Passed the Senate May 6, 2002

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

Randall Smith
President of the Senate

Chasmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

H.B. 2620

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State